

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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BLACK LOVE RESISTS IN THE RUST, et al.,

*Plaintiffs,*

Case No. 1:18-cv-719

- vs -

CITY OF BUFFALO, N.Y., et al.,

*Defendants.*

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**PLAINTIFFS' UNOPPOSED NOTICE OF MOTION AND  
MOTION TO MODIFY SCHEDULING ORDER**

Plaintiffs respectfully move for an extension of six months to the discovery and dispositive motion deadlines presently set by the Court's scheduling order. (*See* Nov. 13, 2019 Minute Order).

In support of this Motion, Plaintiffs state:

1. Under the present schedule, the deadline for completion of fact discovery and any accompanying motions to compel is June 12, 2020. The Court has set additional deadlines for completion of all expert discovery by September 25, 2020 with initial reports to be filed by July 31, 2021, rebuttal reports to be filed by September 2, 2020, and all expert depositions to be completed by September 25, 2020. The deadline for filing dispositive motions is October 30, 2020. *See* Nov. 13, 2019 Minute Order granting Plaintiffs' Consent Motion to Modify Scheduling Order (ECF No. 49).
2. Since entering the Nov. 13, 2019, scheduling order, this Court entered an Order granting in part and denying in part Plaintiffs' motions to compel (ECF 51), and Plaintiffs moved for leave to amend and supplement their complaint (ECF 57, 59).

3. Defendants have yet to produce the substantial majority of the discovery this Court ordered them to produce.
4. During the parties' recent conferrals, Defendants' counsel stated that the COVID-19 outbreak has severely limited Defendants' ability to search for and produce discovery. According to Defendants' counsel, because many City offices are closed and staff have fallen ill or are working from home, Defendants currently cannot search for or produce any paper discovery.
5. The parties have met and conferred regarding the issues identified in the motion to compel and have made some progress. Following a telephone call on January 22, 2020, the parties exchanged emails on Feb. 3, 11, 14, 25, March 6 and 10. Defendant's counsel then fell ill due to probable COVID-19, and the parties could not move discovery forward for several weeks.
6. With respect to the production of ESI, on January 22, Plaintiffs provided Defendants with twenty custodians and twenty search terms as ordered by this Court, and Defendants made a small initial production on February 3. In April 2020, with the assistance of an outside vendor, Defendants retrieved the Outlook and Lotus Notes files for the custodians Plaintiffs identified, ran some but not all of the search terms, and made a second small production on April 29. Defendants have produced the results of most (but not all) of the search terms for two custodians and the results of one search term for one additional custodian. Defendants have yet to produce documents for the other 17 custodians.
7. With respect to the Internal Affairs complaints, Defendants have produced 63 of the 138 unduplicated files this Court ordered produced. However, counsel for Defendants

stated that he has been unable to search for the remaining Internal Affairs complaints because they are paper files. The office where the files are stored is closed and key personnel have been unavailable to conduct the search. Other requests are in a similar state of partial production and involve paper files or the need to coordinate with BPD personnel who are currently unavailable. Due to COVID-19, the parties do not know when Defendants will be able to resume paper discovery.

8. The discovery sought from Defendants that has not yet been produced is materially relevant to Plaintiffs' ability to prepare for depositions and move for class certification.
9. The Parties are engaged in ongoing discovery discussions and document production. Plaintiffs recently served Defendants with additional discovery targeted at issues raised in their proposed amended complaint. Plaintiffs anticipate that they will provide additional custodians and search terms for ESI searches and will depose Defendants and other personnel of the City of Buffalo and its agencies before the close of the discovery period. Defendants have not yet taken any discovery.
10. Accordingly, Plaintiffs respectfully request the following modifications of the schedule:

<b>Deadlines</b>	<b>Current Date</b>	<b>Modified Date</b>
Deadline for completion of fact discovery	June 12, 2020	December 12, 2020
Deadline for motions to compel discovery	June 12, 2020	December 12, 2020
Deadline for service of Initial Expert Reports	July 31, 2020	January 31, 2021
Deadline for service of Rebuttal Expert Reports	September 2, 2020	March 2, 2021
Deadline for completion of all expert discovery (incl. expert depositions)	September 25, 2020	March 25, 2021
Deadline for Dispositive Motions	October 30, 2020	April 30, 2021

11. Plaintiffs have conferred with counsel for Defendants regarding this request for an extension of discovery and dispositive motion deadlines, and he has stated that he does not oppose the request.

12. Extending the discovery schedule will permit the parties sufficient time to complete discovery, thereby increasing the likelihood that they may narrow the issues in dispute. Accordingly, good cause exists to justify this request to extend the discovery and dispositive motion deadlines by six months.

WHEREFORE, Plaintiffs respectfully request that the Court modify the schedule as proposed.

Dated: May 15, 2020

Respectfully submitted,

/s/ Keisha A. Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2020, I electronically filed the foregoing Notice of Motion with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants in this case:

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*s/ Claudia Wilner*